

G-008/PA-90-604 ESTABLISHING PROCEDURES AND DENYING PETITION TO
INTERVENE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice Vick	Commissioner

In the Matter of the Proposed Merger of
Minnegasco, Inc. with and into Arkla, Inc.

ISSUE DATE: September 14, 1990

DOCKET NO. G-008/PA-90-604

ORDER ESTABLISHING PROCEDURES
AND DENYING PETITION TO INTERVENE

PROCEDURAL HISTORY

On August 21, 1990, Minnegasco, Inc. (Minnegasco or the Company) filed notice of its intent to merge with and into Arkla, Inc., a company incorporated in the State of Delaware. The filing stated that Minnegasco's parent company, Diversified Energies, Inc., would also merge with and into Arkla.

Minnegasco stated it did not believe the Commission had jurisdiction over the merger. The Company also stated it was willing to cooperate fully in any Commission examination of the merger, without waiving its jurisdictional claim. The Company requested expedited treatment of the matter to allow completion of the merger by December 31, 1990, as required under the terms of its agreement with Arkla.

On September 11, 1990, the Minnesota Alliance for Competition filed a petition to intervene in the proceeding and to refer the matter to the Office of Administrative Hearings for contested case proceedings. The Company opposed this petition.

On September 12, 1990, the Company made a supplementary filing, requested by Commission staff, containing additional information in regard to the proposed merger.

The matter came before the Commission on September 12. In addition to the Company and the Alliance, the Department of Public Service (the Department) and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) appeared and stated they wished to become parties to the proceeding.

FINDINGS AND CONCLUSIONS

Jurisdiction

The Commission finds that it has general jurisdiction over the proposed merger under Minn. Stat. §§ 216A.02 (1988) and 216B.21 (1988), and specific jurisdiction under Minn. Stat. § 216B.50 (1988).

The Commission finds that the proposed merger requires careful examination and will assert jurisdiction. Minnegasco provides natural gas service to approximately 476,000 customers in Minnesota, including approximately 432,000 residential customers. The Commission has a duty to ensure that these consumers continue to receive safe and reliable service at just and reasonable rates.

Petition to Intervene

The Minnesota Alliance for Competition (the Alliance) is an association of Minnesota appliance dealers, electrical contractors, heating and cooling contractors, mechanical contractors, plumbing contractors, and sheet metal contractors. Alliance members compete with Minnegasco's unregulated appliance sales and service business.

The Alliance based its petition to intervene in part on the allegation that the proposed merger would create a new company with vertically integrated operations in the manufacture, wholesale and retail marketing, financing, and servicing of major appliances. The Alliance also alleged that Minnegasco's regulated operations currently subsidize its appliance sales and service business, and that the proposed merger would exacerbate the problem. Minnegasco stated that Arkla would not be manufacturing furnaces. The Alliance stated if that were true, it would alleviate their concerns with respect to vertical integration. The Alliance continued to claim, however, that the alleged ongoing subsidization of the Company's unregulated activities should be investigated in this docket. The Company opposed the petition.

Minn. Rules, part 7830.0600 sets forth the standards for granting a petition to intervene:

Complainants, petitioners, and respondents specifically named as such in any pleading are parties to the proceeding. No other person shall become a party to the proceeding except by leave of the presiding officer(s) upon petition to intervene under parts 7830.2200 to 7830.2400 and a showing that he is specifically deemed by statute to be interested in the particular type of matter involved, or that he is specifically declared by statute to be an interested party to the particular type of proceeding involved, or that by the outcome of the proceeding he will be bound and affected either favorably or adversely with respect to an asserted interest peculiar to the person as distinguished from an interest common to the public or other taxpayers in general; such person shall be styled "intervenor."

Minn. Rules, part 7830.0600.

Minn. Rules, part 7830.2200 requires intervention petitions to allege specific grounds for intervention, which "shall be reasonably pertinent to the issues involved in the principal pleadings, and shall not unduly broaden the issues."

The Commission finds that the Alliance has not demonstrated that in the merger proceeding its interests are different from the interests of other ratepayers or the interests of the general public.

The Commission also finds that the issue of alleged subsidization of Minnegasco's unregulated business by its regulated business could be raised and examined independent of this proceeding. The issue of such alleged subsidization is not integrally connected with the proposed merger proceeding, which must focus on the public interest impact of Minnegasco's merger into Arkla. Finally, investigating the Alliance's allegations of cross-subsidization of Minnegasco's existing regulated and unregulated entities in this proceeding would significantly and unduly broaden the issues before the Commission in this docket. The Commission will therefore deny the Alliance's petition to intervene.

However, under Minn. Rules, part 7830.0700, persons who wish to make their views known in a proceeding may appear and offer comments or evidence as participants without obtaining full party status. The Commission would receive and consider any comments the Alliance may wish to offer as a participant in this proceeding.

Petition for Contested Case Proceedings

The Alliance also asked the Commission to refer this matter to the Office of Administrative Hearings for contested case proceedings. The Commission finds that this request is premature.

Contested case proceedings are expensive and time-consuming. They are generally required as a matter of law when a proceeding involves contested issues of material fact. They can also be ordered when the Commission believes they would be helpful, as when a proceeding requires extensive testimony or detailed factual development. It is unclear at this point whether contested case proceedings will be necessary or helpful in examining the proposed merger.

Procedure for Examining Proposed Merger

The Commission understands that completing the proposed merger requires coordination of several processes, including submitting a proxy statement to the Securities and Exchange Commission and obtaining approval of shareholders. The Company understandably would like a Commission decision on this matter before issuing its proxy statement, if possible. The Commission will therefore grant the Company's request for expedited consideration of this filing.

To facilitate expedited consideration, the Company has chosen to acquiesce in intervention and discovery by the Department and the RUD-OAG. The Department has statutory authority to intervene in any matter before the Commission and has broad discovery rights. Minn. Stat. §

216A.07 (1988). The RUD-OAG, which represents residential and small business utility users, qualifies as an intervenor under Minn. Rules, part 7830.0600. The Commission will therefor grant party status to both the Department and the RUD-OAG.

The Commission further finds that this proceeding is factually complex and requires discovery rights by all parties. The Commission has authority to grant discovery rights under Minn. Stat. § 216A.05, subd. 3 (1988) and under Minn. Rules, part 7830.3300, subp. 2. H., and will do so.

The Company has promised prompt and complete responses to information requests from Commission staff, the Department, and the RUD-OAG. Clearly, such responses are essential if the Commission is to complete its consideration of the proposed merger within the time frame requested by the Company.

The Commission will require initial comments on the filing within 30 days of this Order and will require reply comments within five days thereafter.

ORDER

1. The petition to intervene filed by the Minnesota Alliance for Competition is denied.
2. The Minnesota Alliance for Competition may, at its option, file comments as a participant in this proceeding.
3. The Department of Public Service and the Residential Utilities Division of the Office of the Attorney General are hereby made parties to this proceeding and may serve information requests on Minnegasco.
4. Minnegasco shall respond promptly and completely to all information requests served by any party to this proceeding.
5. Within 30 days of the date of this Order, initial comments on the proposed merger shall be filed and served on all other parties and participants.
6. Within five days of the filing of initial comments, reply comments shall be filed and served on all other parties and participants.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)